12 S. W. 981. But in Washington, where a statute requires joinder by the wife in alienating or encumbering the realty, community real estate is not chargeable with the independent obligations of the husband. 1915 REM. CODE (Wash.), § 5918; *Brotton* v. *Langert*, 1 Wash. 73, 23 Pac. 688. Later decisions have reached the same result on the more logical ground that community realty is not liable for acts committed by the husband without the scope of his authority as agent of the community. *Day* v. *Henry*, 81 Wash. 61, 142 Pac. 439; *Wilson* v. *Stone*, 90 Wash. 365, 156 Pac. 12. Prior to the principal case, however, like reasoning was not applied to exempt the community personalty from liability. *Powell* v. *Pugh*, 13 Wash. 577, 43 Pac. 879. But the principal case puts all common property, real and personal, on the same basis, and rests the liablility of the community upon the rule *respondent superior*. Without changing the theory of the system this decision further recognizes the individuality of the married woman, and guarantees her interest more than a theoretical existence.

ILLEGAL CONTRACTS — EFFECT OF ILLEGALITY — AGREEMENT FOR RE-EXCHANGE OF NEGOTIABLE PAPER TO EVADE STATUTORY PROHIBITION. — The plaintiff bank, in order to evade the banking laws, contracted with the defendant bank to exchange a customer's note for a note of the same amount held by the defendant. The notes were to be reëxchanged on demand. The note delivered by the defendant was worthless. *Held*, that the plaintiff bank was entitled to the return of the note or its proceeds. *England* v. *Commercial Bank of New Madrid, Mo.*, 242 Fed. 813.

The general rule is that the law leaves parties to an illegal transaction where it finds them. *Holman* v. *Johnson*, 1 Cowp. 341; *Stewart* v. *Thayer*, 170 Mass. 560, 49 N. E. 1020. Equity, likewise, refuses to raise a resulting trust in favor of the settlor where an express trust for an illegal purpose has failed. *In re Great Berlin Steamboat Co.*, 26 Ch. D. 616. But *cf. Taylor* v. *Bowers*, 1 Q. B. D. 291. This rule has been severely criticized. See WOODWARD, QUASI CONTRACTS, § 135. Important exceptions have been recognized. Where the offense is not *malum in se* the plaintiff has sometimes prevailed. *Davies* v. *London, etc. Ins. Co.*, L. R. 8 Ch. D. 469. See KEENER, QUASI CONTRACTS, 258. Where the defendant's conduct is tainted with fraud the courts have been ready to find that the parties are not *in pari delicto*. *Brown* v. *McIntosh*, 39 N. J. L. 22; *Thomas* v. *Richmond*, 12 Wall. (U. S.) 349. See PERRY, TRUSTS AND TRUSTEES, 6 ed., § 214; POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 403. See also 26 HARV. L. REV. 738. It is solely for public authority to assert the illegality of contracts contrary to public policy. See *Union Nat. Bank* v. *Matthews*, 98 U. S. 621, 629. A defendant, sued by a national bank for money lent, cannot maintain the defense that the bank exceeded the amount permitted by law. *Union Gold Mining Co.* v. *Rocky Mt. Nat. Bank*, 96 U. S. 640; *Bank of Middlebury* v. *Bingham*, 33 Vt. 621. Where illegal contracts have been held void, a quasi-contractual obligation to make restitution has been enforced. *Central Transp. Co.* v. *Pullman's, etc. Co.*, 139 U. S. 24; *Pullman's, etc. Co.* v. *Central Transp. Co.*, 171 U. S. 138. But see E. H. Warren, "Executed *Ultra Vires* Transactions," 23 HARV. L. REV. 495. See also 23 HARV. L. REV. 627. Since the statute in the principal case was intended to protect the bank's depositors, the court's decision seems desirable.

MANDAMUS — PROCEEDINGS — TRAVERSE OF RETURN TO ALTERNATIVE WRIT. — An alternative writ of mandamus issued to compel a corporation to permit inspection of its books by a stockholder. In its return the corporation alleged that the inspection was desired for an improper purpose. *Held*, that the return must be accepted as true and the peremptory writ denied. *State ex rel. Linihan* v. *United Brokerage Co.*, 101 Atl. 433 (Del.).

At common law the court would not try the truth of a return to an alternative writ upon affidavits. *Universal Church* v. *Columbia Township*, 6 Oh. St. 446. See *Manaton's Case*, T. Raym. 365. The remedy of the prosecutor was by an action on the case for false return or, if the rights of the public were involved, by criminal information. *State* v. *Wilmington Bridge Co.*, 3 Harr. (Del.) 540. See TAPPING, MANDAMUS, 383. The statute of Anne made the return traversable in cases involving municipal corporations. 9 ANNE, c. 20. A later enactment extended the same rule to all cases for mandamus. 1 WILL. IV. c. 21. The pleadings in mandamus became substantially like those in ordinary actions at law. See *King* v. *Mayor and Aldermen of London*, 3 Barn. & Ad. 255, 280. The statute of Anne or similar legislation forms a component part of the law of most of the United States. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., § 457 *et seq.* Even where the statute of Anne has not been recognized it has sometimes been held that the modern development of the writ of mandamus and the policy of our law against multiplicity of suits justify an overturning of the dilatory and cumbersome rule of the common law. *Fitzhugh* v. *Custer*, 4 Tex. 391. The principal case, however, is supported by prior decisions in Delaware and by the weight of early authority elsewhere. *McCoy* v. *State*, 2 Marv. (Del.) 543, 36 Atl. 81; *Dane* v. *Derby*, 54 Me. 95; *Police Board* v. *Grant*, 17 Miss. 77.

MASTER AND SERVANT — ESTOPPEL — LIABILITY FOR TORT OF DEFENDANT REPRESENTING ITSELF AS EMPLOYER. — The defendant corporation turned over a mine which it had operated to its president. A miner employed after the transfer was injured. He brought suit against the defendant, reasonably believing it his employer. *Held*, that the corporation is liable. *Ward* v. *Liverpool Salt and Coal Co.*, 92 S. E. 92 (W. Va.).

Where the relation of master and servant does not exist in fact, there can be no liability predicated upon that relation unless the defendant is estopped to deny its existence. Estoppel must be taken to be the basis of the court's holding, although the precise term does not appear. See *Solomon R. Co.* v. *Jones*, 30 Kan. 601, 2 Pac. 657. Estoppel raises the question whether the plaintiff acted upon the representation. See BIGELOW, ESTOPPEL, 5 ed., 570 *et seq.* It apparently was a matter of indifference to the plaintiff who his employer was. On the other hand, the expenses of litigation have been held enough to raise an estoppel. *Meister* v. *Birney*, 24 Mich. 435. This suggests the vexed question whether estoppel constitutes part of the cause of action. See EWART, ESTOPPEL, 187. If it does it would be difficult to say that the plaintiff has a cause of action at the institution of his suit, since there has been no change of position until that moment. However that may be, the better rule is that the plaintiff can recover only for the damage actually sustained. *Campbell* v. *Nichols*, 33 N. J. L. 81. *Contra*, *Meister* v. *Birney*, *supra*. See EWART, ESTOPPEL, 191 *et seq.* Under this view the most that plaintiff could recover would be costs and attorney's fees.

PATENTS — INFRINGEMENT — RESTRICTION FORBIDDING USE EXCEPT WITH ACCESSORIES OF PATENTEE'S MANUFACTURE. — Patented motion picture-projecting machines were sold with license restriction that they be used only with films of the patentee's manufacture. The defendant, a rival film concern, with notice of the restriction, leased films to users of the machines. *Held*, that such leases do not constitute contributory infringement. *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 37 Sup. Ct. Rep. 416. For a discussion of this case, see Notes, p. 298.

PAYMENT — APPLICATION — PAYMENTS ON RUNNING ACCOUNT, PART OF WHICH IS SECURED. — Plaintiffs and defendant had a running account, on which advances were charged and payments credited without distinctions.